IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1066 OF 2007.

Bhushan Purshottam Agarwal. ... Petitioner.

Versus.

Mrs.Varshali w/o.Bhusan Agarwal. ... Respondent.

Shri D.S.Chandnani for the Petitioner.

CORAM : ABHAY S.OKA, J.

DATED : 19th April, 2007.

P.C.:

1. Heard the learned Advocate for the Petitioner. The Petitioner is the husband and the Respondent is the wife. The Petitioner filed a petition for dissolution of marriage under sections 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955. In the said petition an application was made by the Petitioner for seeking a decree on admission. By the impugned order, the said application has been rejected.

2. The learned Counsel for the Petitioner has invited my attention to the averments in the Application made by the Petitioner. He submitted that the decree for dissolution of marriage deserves to be passed on admission atleast in so far as the ground of desertion is concerned.

3. I have considered the submissions. It is obvious that the prayer for grant of divorce is being

opposed by the Respondent-wife. Considering the provisions of the Hindu Marriage Act, 1955 and in particular section 23 thereof, the learned trial Judge was right in refusing to pass a decree on admission. Merely because the Respondent wife has declined to co-habit with the Petitioner is not a ground to pass a decree for divorce on admission. The decree for divorce cannot be granted unless the Petitioner-husband establishes the grounds pleaded in the petition in accordance with the law. Therefore, no case is made out for interference in a petition under Article 227 of the Constitution of India. Petition is rejected. All contentions of the parties in the pending petition are kept open.

3. Hearing of the petition is expedited. The learned trial Judge will decide the petition as expeditiously as possible and preferably on or before 31st December 2007.

Judge.